

SCHEDULING ORDER

PLG	Grimco	Deadline
Proposed Dates ²		
April 29, 2021 (completed)		Plaintiff serves preliminary ³ infringement contentions in the form of a chart setting forth where in the accused product(s) each element of the asserted claim(s) are found. Plaintiff shall also identify the earliest priority date (<i>i.e.</i> the earliest date of invention) for each asserted claim and produce: (1) all documents evidencing conception and reduction to practice for each claimed invention, and (2) a copy of the file history for each patent in suit.
May 6, 2021 (completed)		Case management conference.
May 20, 2021		The Parties shall submit an agreed Scheduling Order. If the parties cannot agree, the parties shall submit a separate Joint Motion for entry of each Order briefly setting forth their respective positions on items where they cannot agree. Absent agreement of the parties, the Plaintiff shall be responsible for the timely submission of this and other Joint filings.
June 24, 2021		Defendant serves preliminary invalidity contentions in the form of (1) a chart setting forth where in the prior art references each element of the asserted claim(s) are found, (2) an identification of any limitations the Defendant contends are indefinite or lack written description under section 112, and (3) an identification of any claims the Defendant contends are directed to ineligible subject matter under section 101. Defendant shall also produce (1) all prior art referenced in the invalidity contentions, (2) technical documents, including software where applicable, sufficient to show the operation of the accused product(s),

² Unless an alternate date is noted, the parties agree on the proposed date.

³ The parties may amend preliminary infringement contentions and preliminary invalidity contentions without leave of court so long as counsel certifies that it undertook reasonable efforts to prepare its preliminary contentions and the amendment is based on material identified after those preliminary contentions were served, and should do so seasonably upon identifying any such material. Any amendment to add patent claims requires leave of court so that the Court can address any scheduling issues.

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		and (3) summary, annual sales information for the accused product(s) for the two years preceding the filing of the Complaint, unless the parties agree to some other timeframe.
July 2, 2021 ⁴		Parties exchange claim terms for construction.
July 12, 2021		Parties exchange proposed claim constructions.
July 19, 2021		Parties disclose extrinsic evidence. The parties shall disclose any extrinsic evidence, including the identity of any expert witness they may rely upon with respect to claim construction or indefiniteness. With respect to any expert identified, the parties shall identify the scope of the topics for the witness's expected testimony. ⁵ With respect to items of extrinsic evidence, the parties shall identify each such item by production number or produce a copy of any such item if not previously produced.
July 26, 2021		Deadline to meet and confer to narrow terms in dispute and exchange revised list of terms/constructions.
August 2, 2021		Plaintiff files Opening claim construction brief, including any arguments that any claim terms are not indefinite.
August 20, 2021		Defendant files Responsive claim construction brief.
August 30, 2021		Plaintiff files Reply claim construction brief.
September 10, 2021		Defendant files a Sur-Reply claim construction brief.

⁴ The parties agreed to a schedule accelerated from the Court's default schedule—which would set the *Markman* hearing on October 14, 2022—in order to complete briefing prior to the *Markman* hearing date set by the Court (September 22, 2021).

⁵ Any party may utilize a rebuttal expert in response to a brief where expert testimony is relied upon by the other party.

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September 10, 2021		Parties submit optional technical tutorials to the Court and technical adviser (if appointed). ⁶
September 15, 2021		Parties submit Joint Claim Construction Statement. <i>See</i> General Issues Note #9 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).
September 22, 2021 (Court provided date)		<i>Markman</i> Hearing at 3:30 p.m.
September 23, 2021		Fact Discovery opens; deadline to serve Initial Disclosures per Rule 26(a).
November 3, 2021		Deadline to add parties.
November 17, 2021		Deadline to serve Final Infringement and Invalidity Contentions. After this date, leave of Court is required for any amendment to Infringement or Invalidity contentions. This deadline does not relieve the Parties of their obligation to seasonably amend if new information is identified after initial contentions.
January 12, 2022		Deadline to amend pleadings. A motion is not required unless the amendment adds patents or patent claims. (Note: This includes amendments in response to a 12(c) motion.)
January 28, 2022	March 23, 2022 ⁷	Deadline for the first of two meet and confers to discuss significantly narrowing the number of claims asserted and prior art references at issue. Unless the parties agree to the narrowing, they are ordered to contact the Court's Law

⁶ The parties should contact the law clerk to request a Box link so that the party can directly upload the file to the Court's Box account.

⁷ Grimco's proposed date aligns with the Court's default schedule, which provide for 10 weeks between the amendment of pleadings and the first meet-and-confer to narrow the issues. The remaining dates proposed by Grimco are based on the Court's default schedule and account for counsel's trial date conflict, noted below.

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		Clerk to arrange a teleconference with the Court to resolve the disputed issues.
March 4, 2022	April 20, 2022	Close of Fact Discovery.
March 11, 2022	April 27, 2022	Opening Expert Reports.
April 8, 2022	May 25, 2022	Rebuttal Expert Reports.
April 22, 2022	June 15, 2022	Close of Expert Discovery.
April 25, 2022	June 22, 2022 ⁸	Deadline for the second of two meet and confer to discuss narrowing the number of claims asserted and prior art references at issue to triable limits. To the extent it helps the parties determine these limits, the parties are encouraged to contact the Court's Law Clerk for an estimate of the amount of trial time anticipated per side. The parties shall file a Joint Report within 5 business days regarding the results of the meet and confer.
April 29, 2022	June 29, 2022 ⁹	<p>All dispositive motions & <i>Daubert</i> motions shall be filed and served on all other parties on or before this date and shall be limited to 25 pages total per side. The parties need not confer prior to filing such motions.</p> <p>Any objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony. Such motions are limited to 25 pages total per side. The parties need not confer prior to filing such motions. The failure to strictly comply with this paragraph will be deemed a</p>

⁸ According to the Court's default schedule, this deadline should be June 22, 2022. However, as noted below, Grimco's counsel will be in the middle of trial in another matter at this time. As a result, Grimco respectfully requests the Court adjust all the remaining dates by two weeks (noted as "Alternate Date").

⁹ Alternate Date: July 13, 2022.

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		<p>waiver of any objection that could have been made pursuant to Federal Rule of Evidence 702.</p> <p><i>See General Issues Note #9 regarding providing copies of the briefing to the Court and the technical adviser (if appointed).</i></p> <p>By the this date, the parties shall their respective exchange witness lists for trial.</p>
May 6, 2022	July 13, 2022 ¹⁰	<p>By this date, the parties shall exchange their respective (i) exhibit lists, (ii) deposition designations, (iii) proposed jury charges and questions for the jury, and (iv) Motions <i>in Limine</i> topics to determine which may be agreed. With respect to exhibits, each side will make available electronic copies of their proposed exhibits (unmarked but with file names corresponding to numbering on exhibit list).</p> <p>By this date, Plaintiff will send a draft of the joint pre-trial order (PTO) to Defendant. Exchange of trial demonstratives will be addressed in the joint PTO.</p>
May 13, 2022	July 20, 2022	<p>Responses to dispositive and/or <i>Daubert</i> motions shall be filed and served on all other parties. Responses shall be limited to 25 pages total per side for each set of dispositive and <i>Daubert</i> motions filed by the other side.</p>
May 20, 2022	July 27, 2022	<p>Any replies in support of dispositive and/or <i>Daubert</i> shall be filed and served on all other parties. Replies shall be limited to 10 pages total per side for each set of dispositive and <i>Daubert</i> motions, but the Court need not wait for any reply prior to ruling on the corresponding motion.</p>
May 23, 2022	July 27, 2022	<p>By this date, the parties shall exchange their respective (i) objections to exhibit lists, (ii) counter deposition designations, and (iii) objections to the proposed jury charge, with supporting explanation and citation of controlling law.</p> <p>By this date, the parties shall also submit to the Court their Motions <i>in Limine</i>.</p>

¹⁰ Alternate Date: July 27, 2022.

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		By this date, Defendant will send Plaintiff its revisions to the draft joint PTO. The parties shall thereafter confer on said draft PTO in advance of submission to the Court. The parties' exhibit lists (including joint exhibits and unobjected-to exhibits), deposition designations, and counter-designations will be submitted as part of joint PTO.
May 26, 2022	August 1, 2022	Serve objections to counter deposition designations.
May 30, 2022	August 4, 2022 ¹¹	By this date the parties will submit to the Court their Joint Pre-Trial Order, including the identification of issues to be tried, identification of witnesses, trial schedule provisions, and all other pertinent information. By this date the parties will also submit to the Court their oppositions to Motions <i>in Limine</i> .
June 6, 2022	August 18, 2022 ¹²	File Notice of Request for Daily Transcript or Real Time Reporting. If a daily transcript or real time reporting of court proceedings is requested for trial, the party or parties making said request shall file a notice with the Court and e-mail the Court Reporter, Kristie Davis at kmdaviscsr@yahoo.com . Deadline to meet and confer regarding remaining objections and disputes on motions <i>in limine</i> .
TBD (based on date of Final Pretrial Conference)		File joint notice identifying remaining objections to pretrial disclosures and disputes on motions <i>in limine</i> .
TBD	September 1, 2022 ¹³	Final Pretrial Conference. The Court expects to set this date at the conclusion of the <i>Markman</i> Hearing.

¹¹ Alternate Date: August 18, 2022.

¹² Alternate Date: September 1, 2022.

¹³ Alternate Date: September 15, 2022.

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June 20, 2022 (Court provided date)	September 22, 2022 ¹⁴ (date set by Court's default Scheduling Order). ¹⁵	Jury Selection/Trial. The Court expects to set these dates at the conclusion of the <i>Markman</i> Hearing.

SIGNED this 15th day of September, 2021.


 ALAN D ALBRIGHT
 UNITED STATES DISTRICT JUDGE

¹⁴ Alternate Date: October 6, 2022.

¹⁵ The parties will address this at the claim construction hearing as the Court has instructed. However, in order to provide advance warning for the Court, Grimco notes that it has an earlier-filed case set for trial in the United States District Court for the Eastern District of Missouri on June 20, 2022. *Low Temp Indus., Inc. v. Duke Manufacturing Co.*, No. 4:20-CV-00686-MTS. Two members of Grimco's team in this case—including lead counsel—are involved and represent Duke Manufacturing in that litigation. In addition, the trial date set in this case (June 22, 2022) is materially different than the date that would be set pursuant to the Court's default schedule (September 22, 2022). For these reasons, Grimco will ask that the Court adjust the trial date as noted herein.